

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

11-CR-300 (JSR)

RICHARD LIPSKY,
Defendant.

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**DECLARATION OF RICHARD LIPSKY PURSUANT TO 28 U.S.C. §1746
AND S.D.N.Y. LOCAL RULE 2(B) IN SUPPORT OF HIS MOTION
FOR AN EXEMPTION FROM 29 U.S.C. §504**

I, Richard Lipsky, hereby declare pursuant to the provisions of 28 U.S.C. §1746 and S.D.N.Y. Local Rule 2(B), under penalty of perjury, on this 25th day of July 2016, that the following is true and correct:

1. I am Richard Lipsky, defendant in the above matter. I make this Declaration under the penalties of perjury in support of my application for an exemption from employment as a consultant to a labor union contained in 29 U.S.C. §504(a)(1) and move, pursuant to subsection (a)(5) thereof, for an exemption to allow me to consult on certain specific criminal justice issues as set forth in more detail herein and in the accompanying papers.

2. It is my understanding of the statute that in order to qualify for an exemption it is incumbent upon me to demonstrate (a) that I have been rehabilitated and (b) that I can be trusted in the position which I seek to hold through this exemption. I here set forth the facts that I believe satisfy both requirements. The accompanying memorandum of law discusses the applicable legal standards.

MY BACKGROUND

3. I was born in New York City in 1947, the youngest of two children of David and Ruth Lipsky, now both deceased. My father was a theatrical press agent and my mother, who stayed at home when my sister and I were growing up, later went back to school and became a school psychologist.

4. I attended the Bronx High School of Science (Class of 1964) and Clark University, where I played basketball and was the sports editor of the school paper. I was awarded a Bachelor of Arts degree in history in 1968. In 1973, I was awarded a Master's Degree in political science by Hunter College of the City University of New York, followed by a doctorate in political science awarded in 1979 by the Graduate Center of the City University of New York. My doctoral dissertation, on the political and social impact of American sports, was adapted into a book entitled *How We Play The Game* (Beacon Press 1980). I have continued to write and my work has been widely published in both scholarly journals and local media on a wide range of public policy issues from criminal justice to transportation, health and economic development policy.

5. In 1969, I began teaching at a public elementary school in Washington Heights. I married Jeri Wellman, and we had two children. Unfortunately, the stress of teaching full time, going to graduate school at night and starting a family put insurmountable strains on the marriage and in 1978, we separated and later divorced.

6. In 1980, I married Dorothy. Together, we have two children. All four of my children are now adults. I have always been and remain close to my two younger children and believe that I have been as loving and supportive a father, and as devoted a husband, as I could be.

MY PROFESSIONAL LIFE PRIOR TO MY CONVICTION

7. In 1973, I left the public school system and began teaching at the post high school level, including at Queens College and other local area colleges and universities, always focused on political theory and public policy. That led me in 1980 to begin working as a policy analyst for the New York City Criminal Justice Coordinating Council. In 1981, I started my own business, Richard Lipsky Associates. There, I focused on providing public policy and public relations consulting generally to those seeking to influence public policy at the legislative level. The firm focused on the politics of environmental law, land use review and the protection and enhancement of neighborhood retailers. Of particular interest to me was protecting the way of life of the communities and the small businesses of this city thorough the creation of coalitions amongst local retailers, unions and civic groups. In that regard, I worked to keep big box stores like Wal-Mart, BJs, and Costco out of residential neighborhoods and fought the government practices, such as eminent domain, that often allowed such chains entry into neighborhoods.

8. While I did spend time pleading my clients' cases to various local and state officials – and that made me a lobbyist – I equally worked to mobilize favorable public opinion on client issues through the media and other education methods: publishing a blog; writing memos and talking points for others; drafting press releases; and organizing press conferences and rallies.

CRIMINAL PROSECUTION

9. In 2011, I was arrested and charged with offenses related to my payment of disguised compensation to State Senator Carl Kruger in exchange for him acting favorably to clients advocating particular legislation. On January 4, 2012, I plead guilty to conspiracy and mail fraud in connection with the scheme. The plea was made pursuant to an agreement in which I cooperated promptly and fully, assisting the government in a number of public

corruption investigations. I was sentenced to three months in prison, which I completed and from which I was released on February 24, 2013. Over three years have passed since my release from prison.

10. The record of my life prior to the arrest, which is extensively documented both in the sentencing submission I made as well as the Pre-Sentence Report, shows a life already devoted to serious work and to family. I do not think that anyone disputes that my criminal conduct was aberrational. Thus, my post arrest life has been an attempt to remake the good name I had prior to my involvement in Kruger's scheme. It has not been easy. Since my release I have been working hard to rebuild my life both personally as well as professionally. I have applied for and been granted a Certificate of Relief from Civil Disabilities by New York State, which I attach as Exhibit "A". I received that relief after the state examined my post-incarceration activities.

POST CONVICTION ACTIVITIES

11. Clearly, the past five years have been a real challenge for my family, but I have been blessed with their support and the support of friends. Both they, and I, believe I still have positive contributions to make on behalf of others, despite my limited future work life at 69.

12. Throughout my career I was known as a zealous lobbyist for the under-represented. *See, e.g.,* <http://www.villagevoice.com/best-of/2009/people-and-places/best-small-business-lobbyist-6448805>), where I was named in 2009 as the Best Lobbyist for Small Business Owners by the *Village Voice* (copy attached as Exhibit "B"). Since my release from prison, I have continued with some of that same work. In particular, I have been working with the Bodega Association on its "Healthy Bodega" initiative that, under a grant from the Centers for Disease Control, is looking to create a partnership between the store owners and the community to promote the sale of healthier food options. *See* "20 Bronx Bodegas to Participate in The Healthy

Bodega Initiative: Small Business Training to Promote Healthier Food and Beverages” at <http://www.institute.org/bhr-news/20-bronx-bodegas-to-participate-in-the-healthy-bodega-initiative-small-business-training-to-promote-healthier-food-and-beverages/> (copy annexed as Exhibit “C”). A letter from Ramon Murphy, President of the Association, attesting to my efforts on behalf of this effort is attached as Exhibit “D”.

13. My principal efforts, however, have been on behalf of the Foundation for Criminal Justice (FCJ or Foundation), an arm of the National Association of Criminal Defense Lawyers. There, I have been involved in helping the organization on a range of policy issues related to justice reform. A letter from Norman L. Reimer, the Executive Director of the NACDL, is attached as Exhibit “E”, discussing the work I have done for the organization.

14. The most personally meaningful work I am doing with the Foundation is on its “Restoration of Rights” initiative, designed to remove the legal barriers to re-entry for those who have been incarcerated. Working to come back from my own challenge has made me very sensitive to the difficulties that many men and women - less fortunate than me - face when trying to reintegrate into society as productive citizens after a criminal conviction.

15. I have written a number of Op-Eds on restoration of rights as part of my consulting work, which I attach as Exhibit “F”. *See, e.g.*, <http://www.nydailynews.com/opinion/give-ex-cons-shot-redemption-article-1.1863841>; <http://www.bostonglobe.com/opinion/2014/12/19/pardon-mark-wahlberg/myD14v63WzJBNPZ1oNkdVM/story.html#comments>).

16. What is especially exciting for me in this work is how we have been able to bring together so many different groups, running from the National Rifle Association to the ACLU, the Heritage Foundation, and the Open Society Foundation, all working together towards a shared goal.

17. Restoration of Rights of the formerly incarcerated is a preeminent civil rights issue and has profound implications for labor. Collateral damage from their original convictions and sentences are bars to re-entry for millions of formerly incarcerated Americans. But while the legal barriers to employment for those returning from prison certainly put this group at an employment disadvantage, if employers are not willing to hire it does not matter what the legal barriers are. Therefore, the first hurdle is getting employers willing to hire those formerly incarcerated and not reject them on a blanket basis. My current focus is working to engage organized labor in this effort, first and foremost because unions enjoy wide access to employers. Once the unions become stakeholders in the effort to have ex-convicts enjoy access to re-employment I believe they will be both active and effective in the removal of legal barriers.

18. In that regard and on behalf of the FJC I reached out to the United Food and Commercial Workers Union (UFCW). I represented the union for 15 years prior to my arrest in 2011. In response to my contact, the UFCW indicated it was very interested in the issue. Indeed, it was in discussion about a potential role in furthering the UFCW's involvement in the Restoration of Rights initiative that with the union that I became aware of the Landrum-Griffin bar – ironically, my own personal barrier to re-entry.

19. This is an issue I would like to devote a great deal of my time to, and I believe I can be most effective by being able to work more closely with unions on this issue. I have spoken to the President of the UFCW who would like to retain me as a consultant, to work predominately on the Restoration of Rights project as well as other policy issues that would call on my academic training. It has been made clear, however, that until I receive an exemption from the bar to employment as a consultant because of my prior conviction, no offer of employment can be extended. Nevertheless, we have already discussed in some detail the work on Restoration of Rights that I could do were the Court to grant the exemption.

20. The UFCW, along with its labor partners and future collaborating stakeholders, can become the catalyst for the kinds of changes needed to make this country a better place for all workers. In my view, the initial work has to be within the union, where I would identify and develop the internal UFCW resources that can play an instrumental role in helping the union take a leadership position in the effort. This would include:

- Developing a mission statement that clearly outlines the importance of the restoration of rights campaign for all UFCW leaders, staff, and rank and file members.
- Developing a coherent strategy that envisions a partnership amongst the UFCW, organized labor as a whole, and the existing diverse group of stakeholders that the Foundation for Criminal Justice has already generated on the Restoration of Rights issue.
- Engaging the UFCW central staff to get buy-in from internal leadership.
- Developing a strategy to engage the UFCW locals, which would involve grass roots organizing through meetings, power point presentations, and the identification of the best leadership resources the UFCW on the local level for the conducting of the restoration of rights effort.
- Developing a series of Op-eds on the restoration of rights issue for leadership that frames the issue from the standpoint of labor and dramatizes the pivotal role of the UFCW in the effort.

21. Once this phase is underway, the next phase would include identification of and engagement with potential partners. This would mean reaching out to the AFL-CIO (that already has a justice reform agenda) and its many constituent members to elicit support for the campaign. The outreach would involve disseminating the union's strategic plan, explaining the nature of the existing restoration of rights coalition, and generating commitments for participation in the reform coalition.

22. Next, I would seek to develop the relationship amongst the UFCW, its labor contingent of stakeholders, and the Foundation, through meetings with the Foundation geared to

development of a consistent message. Other, later phases of the work would include developing a coordinated grassroots effort with the Foundation that involves a partnership between UFCW locals and the indigent defense bar to help those returning from prison to regain their lives and find productive work.

23. Overall, I see my potential role at UFCW as creating a model for union participation and leadership in this effort; creating educational and advocacy materials; and identifying strategic partners, including other unions and working with those unions to develop a stake in the effort. I would not wish to limit my consulting to this particular union, however. Instead, I would like to use my consulting with this union (should the Court allow me to do so) to build a transportable model to other unions interested in becoming stakeholders in the program. Thus, the scope of the exemption request is to be able to work as a consultant to both the UFCW and other unions on this particular issue. Should the exemption be granted, I would be able to work closely with the FCJ, the UFCW, and its many allies at the AFL-CIO, in the effort to ease barriers to re-entry and in the process not only make the justice system fairer, but hopefully to provide real opportunity for others to lead productive lives.

24. I believe that my post-conviction record speaks to my having been rehabilitated, if “rehabilitated” means pursuing a meaningful and law abiding life without engaging, or coming close to engaging, in either the crimes of conviction or any other criminal activity.¹ The second question – whether I can be trusted in the position – seems to me to flow from the first. My interest in working with unions on this important issue is not to feather my own nest, but to

¹ I have also attached, as Exhibit “G”, a letter from a longtime colleague, David Schwartz, Esq., a letter in which Mr. Schwartz attests to his observations of my rehabilitation as well as, as Exhibit “H”, the redacted 5K1.1 letter submitted at the time of my sentencing.

better the lives of others in a way that until my own personal misfortunes I did not fully appreciate existed. Thus, my desire, and my application to the Court, is tied to an interest in using my productive skills to help others who have gone through the same experience I have but who have fewer resources to recover from it.

WHEREFORE, I respectfully ask that the Court grant the exemption requested.



A handwritten signature in black ink, appearing to read "RL". Below the signature is a horizontal line, and underneath the line is the name "Richard Lipsky".